APPEAL NO. 030996
FILED JUNE 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on April 3, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable occupational disease injury; that the date of the claimed injury is _____; that the respondent/cross-appellant (carrier) is not relieved from liability under Section 409.002 because the claimant's employer had actual knowledge of the claimed injury within 30 days of _____; and that the claimant did not have disability. The claimant appeals the compensability determination and, presumably, its effect on the disability determination, and also argues that she was not properly represented at the hearing. The claimant attached documents to her request for review, some of which were not offered at the hearing, and requests that the new evidence be considered for the first time on appeal. The carrier conditionally appeals the date-of-injury determination and the finding of fact relating to the dates that the claimant would have had disability, had it been determined that the claimed injury was compensable.

DECISION

Affirmed as reformed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that is offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents that the claimant attached to her request for review, which were not offered into evidence at the hearing. Accordingly, we decline to consider these documents on appeal.

An occupational disease includes a repetitive trauma injury. Section 401.011(34). A repetitive trauma injury is defined as damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment. Section 401.011(36). Whether the claimant's work activities were sufficiently repetitive to cause the claimed injuries was a factual question for the hearing officer to resolve. Similarly, the date of injury, when the claimant knew or should have known that her injuries may be related to the employment, and whether the carrier is relieved from

liability because it did not receive timely notice of the injury were also issues for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's compensability, date-of-injury and timely-notice determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In addition to the date-of-injury determination, the carrier conditionally appealed the finding of fact relating to the dates that the claimant would have had disability, had her injury been found compensable. As we have affirmed the compensability determination, and that determination precludes a conclusion that the claimant had disability, the carrier is not aggrieved by the finding complained-of on appeal. However, we note that Finding of Fact No. 3 contains an obvious error and is hereby reformed to read as follows: Due to the claimed injuries, Claimant has been unable to obtain and retain employment at her pre-injury wages from December 17, 2002, through the date of the *hearing*.

With regard to the claimant's complaint on appeal that she was not "properly represented" and that her case was not "properly presented to the hearing officer," we note that the Appeals Panel does not have jurisdiction to address such contentions as they are essentially a matter between the claimant and her representative. Texas Workers' Compensation Commission Appeal No. 94030, decided February 15, 1994.

The decision and order of the hearing officer is affirmed as reformed.

The true corporate name of the insurance carrier is **LUMBERMAN'S MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Veronica Lopez-Ruberto
Appeals Judge